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TAGS: EFIN EINV PGOV WTRO UP
SUBJECT: UKRAINE: PROGRESS ON GOVERNMENT PROCUREMENT REFORM

REF: 2007 KYIV 1862

¶1. Summary: Ukraine's Cabinet of Ministers on November 19
issued new provisions to regulate the country's government
procurement system. Experts, including from the World
Bank, agree that the new provisions are an improvement
after several years of GOU backsliding on procurement
reform. The provisions are only temporary, however, and a
new law to govern government procurement is working its way
slowly through the legislative process. The current
reforms should help Ukraine make progress on joining the
WTO Agreement on Government Procurement. End Summary.

GOU Issues New Procurement Regulations

¶2. On November 19, the Cabinet of Ministers issued
Resolution No. 1017, which updated the temporary provisions
for government procurement and was an improvement over
previous regulations. Resolution No. 1017 confirmed the
Ministry of Economy as the central oversight and policy
body for the procurement system, upheld the elimination of
the troublesome Tender Chamber, and added a specific non-
discrimination clause. The move followed several years of
backsliding on government procurement reform and general
disarray in the procurement system -- see below for
background.

¶3. At a donor coordination meeting on December 4, World
Bank Country Director Martin Raiser and World Bank staff
said they positively evaluated Resolution No. 1017 as
largely meeting international standards. There were still
some problems, they said, such as the list of exclusions
from the procurement process, lack of a sufficiently
independent complaint review function, and need for
external oversight (which could not be mandated by the
Cabinet of Ministers), but overall the new procedures
marked a significant improvement.

Background on Procurement System

¶4. Ukraine's procurement system had, until this year,
operated based on the 2000 law "On Procurement of Goods,
Works, and Services Using State Funds." Although this
procurement law was originally largely in line with
international practice, amendments made in 2004-2006 opened
the system to widespread corruption and moved it away from
international norms. Authority to carry out central
oversight and policy development for the government
procurement system was stripped from the Ministry of

Economy, and those policy and oversight functions were dispersed across several bodies, weakening oversight and policy making, and creating various conflicts of interest and overlapping functions. The amendments also granted the Tender Chamber of Ukraine, purportedly a nongovernmental organization, the authority to monitor the procurement process and to undertake key operational functions that were inherently governmental. The Tender Chamber soon became the center of the procurement system's corruption and lack of transparency (reftel).

¶5. The issue spilled into public discourse, with organizations like the Association of Ukrainian Cities protesting the dysfunctional and corrupt system and its impact on local government operations. Parliament, responding to these widespread complaints, repealed the law on government procurement, including all amendments, in March. In place of the law, the Cabinet of Ministers issued a decree establishing temporary provisions for government procurement based largely on the procurement law as it existed in 2004, before the troublesome amendments. Under those temporary provisions, the Tender Chamber was eliminated, and the Ministry of Economy resumed its role as the central oversight and policy body for the procurement system and began to institute real reform. The Constitutional Court subsequently ruled the temporary provisions unconstitutional on technical grounds, however, leaving Ukraine without a functioning government procurement system. The Cabinet of Ministers quickly issued an updated decree, meant to meet the constitutional issue raised by the Court, in October. Resolution No. 1017 then superseded and improved upon that October decree.

New Law Still Needed

¶6. While Resolution No. 1017 should allow for a proper, functioning procurement system, it is only meant as a temporary measure until Parliament can pass a new law on procurement. A new draft law was passed in the first reading in May but is working its way slowly through the legislative process. World Bank and USAID assistance projects helped draft that law. Although the original draft closely followed the principles outlined in Resolution No. 1017, the parliamentary committee now responsible for the draft law has not revealed amendments being considered, and there are concerns that the committee may seek to rollback some of the reforms.

¶7. During the December 4 donor coordination meeting, World Bank and USAID participants identified training for the Ministry of Economy's new procurement-related staff and implementation of an electronic procurement system as other priorities for future assistance.

WTO Agreement on Government Procurement

¶8. Ukraine is not yet a signatory to the WTO Agreement on Government Procurement (GPA), but committed to initiate negotiations for GPA membership within two years of WTO accession, which occurred on May 16, 2008. Ukraine has requested to become an observer to the GPA and is actively preparing its initial offer to begin the process of GPA accession. Resolution No. 1017 puts Ukraine back on the path of reform with an eye towards GPA accession, although additional reforms will likely be necessary.

TAYLOR